



Comptroller General
of the United States

Washington, D.C. 20548

144732

Decision

Matter of: Mars Electric Incorporated

File: B-245192

Date: August 23, 1991

Emmanuel O. Echeumuna for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Susan K. McAuliffe, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where corporate surety's power of attorney form attached to bid bond failed to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety, the agency correctly determined the bond was defective and properly rejected bid as nonresponsive, since there was no evidence at the time of bid opening that surety would be bound.

DECISION

Mars Electric Incorporated protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62472-91-B-8318, issued by the Department of the Navy for the installation of smoke detectors and fire alarm systems. The Navy rejected Mars's bid because the surety's power of attorney form attached to the bid bond failed to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety.

We dismiss the protest. 4 C.F.R. § 21.3(m) (1991).

The IFB required the submission of a bid bond (for at least 20 percent of the bid price) in the proper form by bid opening and cautioned bidders that the failure to do so may be cause for rejection of the bid. Mars submitted the apparent low bid at bid opening. The protester's bid was accompanied by a bid bond naming Indiana Lumbermens Mutual Insurance Company as its corporate surety. The bond was signed on behalf of the insurance company by Glen A. Evans, who was identified on the bond as the "attorney-in-fact." The power of attorney form attached to the bond, however, did not identify Evans, or any other individual, as the attorney-in-fact designated by

Indiana Lumbermens Mutual Insurance Company to bind the company. The Navy rejected Mars's bid as nonresponsive because the power of attorney form failed to designate Evans as an attorney-in-fact authorized to bind the corporate surety, rendering the bond defective.

The protester states that although Evans's name was not listed on the power of attorney form as the attorney-in-fact designated by its corporate surety to bind that company, Evans signed the bid bond on behalf of Indiana Lumbermens Mutual Insurance Company and that his signature on the bond was notarized. Mars contends that the failure to list Evans on the power of attorney form was an unintentional error which it should be able to cure after bid opening and prior to award. Mars submitted a letter to the agency after bid opening which states that Evans had the authority to act as an attorney-in-fact for Indiana Lumbermens Mutual Insurance Company and that the power of attorney number listed on the surety's power of attorney form is one of the numbers assigned to Evans.

A bid bond is a form of security submitted to assure the government that a successful bidder will not withdraw its bid within the period specified for acceptance and, if required, will execute a written contract and furnish performance and payment bonds. See Federal Acquisition Regulation (FAR) § 28.001. The purpose of a bid bond is to secure the liability to the government for excess procurement costs in the event the successful bidder defaults by failing to execute the necessary contractual documents or to furnish the required payment and performance bonds. See FAR § 52.228-1(c); Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 CPD ¶ 268. A bid bond, even if in the proper amount, is defective and renders the bid nonresponsive if it is not clear that it will bind the surety. Baldi Bros. Constructors, B-224843, Oct. 9, 1986, 86-2 CPD ¶ 418. Determining whether the surety is clearly bound is essential because under the law of suretyship, no one incurs a liability to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Andersen Constr. Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279. Whether the individual who signed as the alleged attorney-in-fact had actual authority to bind the surety is not dispositive; rather, the issue is whether it appeared from the face of the bid documents that the individual's signature on behalf of the corporate surety was authorized and binding. See Techno Eng'g & Constr., Ltd., B-243932, July 23, 1991, 91-2 CPD ¶ ____.

Here, the surety's power of attorney form attached to the bond failed to designate Evans as the attorney-in-fact authorized to bind Indiana Lumbermens Mutual Insurance Company. This

omission created an uncertainty as to whether Evans was duly authorized to bind the surety, thereby rendering the bond defective and Mars's bid nonresponsive. Id.; Baldi Bros. Constructors, B-224843, supra. Although Mars attempted to correct the defective power of attorney after bid opening by submitting a letter evidencing Evans's authority to bind the insurance company, such extrinsic evidence cannot be considered in determining the responsiveness of the protester's bid, a determination which must be based solely upon the documents Mars submitted with its bid prior to bid opening. Techno Eng'g & Constr., Ltd., B-243932, supra. Accordingly, the agency correctly determined that the bond was defective since there was no evidence at the time of bid opening that the protester's corporate surety would be bound, and thus properly rejected Mars's bid as nonresponsive.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel